IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2156 OF 2004.
IN
SUIT NO. 2073 OF 2004.

Vibhavan Finance & Investments
Pvt. Ltd. ..Plaintiffs.

VERSUS.

B.N.Gamadia Parsi Hunnershala
Trust & Ors. ..Defendants.

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Dr. Virendra V. Tulzapurkar with K. Ardeshav i/b
Nita Motwani for the plaintiffs.

S. Sawant for the defendants.

Coram: V.M.KANADE, J.
Date: 16th August, 2004.

P.C.

1. Heard the learned counsel appearing on behalf of the plaintiff and defendant. The plaintiff had paid an amount of Rs.5 lacs towards the earnest money on tenders being invited by the defendant. The tender of the plaintiff was highest. However, during the intervening period, consent terms were filed by the defendant and Godrej & Boyc Mfg. Co., The plaintiff has now filed the suit for recovery of Rs.5 lacs with interest. They are also claiming security in respect of the land which was sought to be purchased by them by virtue of the tender offer given by them. The defendants have already deposited an amount of Rs. 5 lacs and the same has been recorded in the order passed by this court on 29th June 2004. In view of the said statement being made by the defendant, no

interim orders were passed by this court. By letter dated 28th June 1993, the defendants had obtained an undertaking from the plaintiff that they would not withdraw the offer until time for acceptance thereof has expired and that they were further bound to pay damages as provided in the terms and conditions of sale. In a suit which was filed by Godrej & Boyc Mfg. Co., against the present defendant, the consent terms were filed. The plaintiffs were not made parties to the said suit. The plaintiff's application for joining them as party defendant was rejected by this court. When the appeal was filed by the plaintiff, they came to know that the consent terms were filed. In my view, the plaintiff will be entitled to withdraw this amount which was deposited by the defendant in this court, which will be subject to the result of the suit. In the event the suit against the plaintiff fails, he shall have to return the said amount of Rs. 5 lacs. Notice of Motion disposed of in the above terms.

(V.M.KANADE,J.)

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